

NOTICE: This opinion is subject to formal revision before publication in the Board volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Santa Fe Operating Limited Partnership d/b/a Santa Fe Hotel & Casino and Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO; International Union of Operating Engineers, Local 501, AFL-CIO; Professional, Clerical & Miscellaneous Employees, Local 995, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 28-CA-13321

November 30, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Pursuant to a charge filed on September 14, 1995, the General Counsel of the National Labor Relations Board issued a complaint on September 19, 1995, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Cases 28-RC-5146, 28-RC-5147, and 28-RC-5148. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On October 30, 1995, the General Counsel filed a Motion for Summary Judgment. On November 2, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 14, 1995, the Respondent filed a response, opposing summary judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and response the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding and the Board's failure to consider, as untimely raised, certain conduct alleged by the Respondent to be objectionable.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all material times, a Nevada corporation maintaining an office and place of business in Las Vegas, Nevada, where it is engaged in the hotel and gaming industry. During the 12-month period ending September 14, 1995, the Respondent, in the course and conduct of its business operations, purchased and received in interstate commerce at its facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Nevada, and derived gross revenues in excess of \$500,000. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 30 and October 1, 1993, the Union was certified as the collective-bargaining representative of the employees on August 28, 1995,¹ in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its Las Vegas, Nevada facility, in the following classifications and departments, including: all front desk, PBX, valet parking, courtesy bus driver, warehouse, receiving, slot mechanic, food and beverage, housekeeping, bowling alley, ice rink, gift shop, nursery, and slot department employees, excluding engineering, maintenance employees, casino table game employees, keno, bingo, race and sports book employees, office clerical employees, confidential employees, guards, and all other employees, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹ 318 NLRB No. 57 (Aug. 28, 1995).

B. Refusal to Bargain

About September 6, 1995, the Union requested the Respondent to bargain, and since September 7, 1995, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 7, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Santa Fe Operating Limited Partnership d/b/a Santa Fe Hotel & Casino, Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO; International Union of Operating Engineers, Local 501, AFL-CIO; Professional, Clerical & Miscellaneous Employees, Local 995, affiliated with International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following

appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time employees employed by the Employer at its Las Vegas, Nevada facility, in the following classifications and departments, including: all front desk, PBX, valet parking, courtesy bus driver, warehouse, receiving, slot mechanic, food and beverage, house-keeping, bowling alley, ice rink, gift shop, nursery, and slot department employees, excluding engineering, maintenance employees, casino table game employees, keno, bingo, race and sports book employees, office clerical employees, confidential employees, guards, and all other employees, and supervisors as defined in the Act.

(b) Post at its facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 30, 1995

William B. Gould IV, Chairman

Margaret A. Browning, Member

Charles I. Cohen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local Joint Executive Board of Las Vegas, Culinary Workers Union, Local 226, and Bartenders Union, Local 165, affiliated with Hotel Employees and Restaurant Employees International Union, AFL-CIO; International Union of Operating Engineers, Local 501, AFL-CIO; Professional, Clerical & Miscellaneous Employees, Local 995, affiliated with International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time employees employed by us at our Las Vegas, Nevada facility, in the following classifications and departments, including: all front desk, PBX, valet parking, courtesy bus driver, warehouse, receiving, slot mechanic, food and beverage, housekeeping, bowling alley, ice rink, gift shop, nursery, and slot department employees, excluding engineering, maintenance employees, casino table game employees, keno, bingo, race and sports book employees, office clerical employees, confidential employees, guards, and all other employees, and supervisors as defined in the Act.

SANTA FE OPERATING LIMITED PART-
NERSHIP D/B/A SANTA FE HOTEL & CA-
SINO